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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2015-0052]

RIN 0579-AE26

Importation of Fresh Persimmons From New Zealand Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning the importation of fruits and vegetables to allow the importation of fresh persimmons from New Zealand into the United States. As a condition of entry, the persimmons would have to be produced in accordance with a systems approach that would include requirements for orchard certification, orchard pest control, post harvest safeguards, fruit culling, traceback, sampling, and treatment with either hot water or modified atmosphere treatment. The persimmons would also have to be accompanied by a phytosanitary certificate with an additional declaration stating that they were produced under, and meet all the components of, the systems approach and were inspected and found to be free of quarantine pests in accordance with the proposed requirements. This action would allow the importation of fresh persimmons from New Zealand while continuing to protect against the introduction of plant pests into the United States.

DATES: We will consider all comments that we receive on or before [Insert date 60 days after date of publication in the Federal Register].

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to  
<http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0052>.
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2015-0052, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0052> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

FOR FURTHER INFORMATION CONTACT: Mr. David B. Lamb, Senior Regulatory Policy Specialist, IRM, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1231; (301) 851-2103.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56-1 through 319.56-75, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

The national plant protection organization (NPPO) of New Zealand has requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow fresh

persimmons (Diospyros kaki Thunb.) from New Zealand to be imported into the United States. As part of our evaluation of New Zealand's request, we prepared a pest risk assessment (PRA) and a risk management document (RMD). Copies of the PRA and the RMD may be obtained from the person listed under FOR FURTHER INFORMATION CONTACT or viewed on the Regulations.gov Web site (see ADDRESSES above for instructions for accessing Regulations.gov).

The PRA, titled "Importation of Persimmon, Diospyros kaki Thunb., as Fresh Fruit from New Zealand into the Entire United States, Including Hawaii and U.S. Territories" (April 23, 2012) evaluates the risks associated with the importation of fresh persimmons from New Zealand into the United States. The RMD relies upon the findings of the PRA to determine the phytosanitary measures necessary to ensure the safe importation into the United States of fresh persimmons from New Zealand.

The PRA identified nine pests of quarantine significance present in New Zealand that could be introduced into the United States through the importation of fresh persimmons:

- The leafroller moths Cnephasia jactatana (Walker), Ctenopseustis herana (Felder and Rogenhofer), Ctenopseustis obliquana (Walker), Epiphyas postvittana (Walker), Planotortrix excessana (Walker), Sperchia intractana (Walker), Stathmopoda skelloni (Butler); and
- The fungi Colletotrichum horii B. Weir & P.R. Johnst. and Cryptosporiopsis actinidiae P.R. Johnst., M.A. Manning & X. Meier.

A quarantine pest is defined in § 319.56-2 of the regulations as a pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled. Potential plant pest risks associated with the

importation of fresh persimmons from New Zealand into the United States were determined by estimating the consequences and likelihood of introduction of quarantine pests into the United States and ranking the risk potential as high, medium, or low. The PRA determined that four of these nine pests—C. herana, C. obliquana, E. postvittana, and P. excessana—pose a high risk of following the pathway of persimmons from New Zealand into the United States and having negative effects on U.S. agriculture. The remaining pests—C. jactatana, C. horii, C. actinidiae, S. intractana, and S. skelloni—were rated as having a medium risk potential.

Based on the conclusions of the PRA and the RMD, we have determined that measures beyond standard port of arrival inspection are required to mitigate the risks posed by these plant pests. Therefore, we are proposing to allow the importation of persimmons from New Zealand into the United States subject to a systems approach. The conditions in the systems approach that we are proposing are described below. These conditions would be added to the regulations in a new § 319.56-76.

#### General Requirements

Proposed paragraph (a) of § 319.56-76 would require the NPPO of New Zealand to provide an operational workplan to APHIS that details the activities that the NPPO would, subject to APHIS' approval of the workplan, carry out to meet the requirements of proposed § 319.56-76. The operational workplan would have to include and describe in detail the quarantine pest survey intervals and other specific requirements in proposed § 319.56-76.

An operational workplan is an agreement between APHIS' Plant Protection and Quarantine program, officials of the NPPO of a foreign government, and, when necessary, foreign commercial entities, that specifies in detail the phytosanitary measures that will be carried out to comply with our regulations governing the importation of a specific commodity. Operational workplans apply only to the signatory parties and establish detailed procedures and

guidance for the day-to-day operations of specific import/export programs. Operational workplans also establish how specific phytosanitary issues are dealt with in the exporting country and make clear who is responsible for dealing with those issues. The implementation of a systems approach typically requires an operational workplan to be developed.

Proposed paragraph (b) of § 319.56-76 would require persimmons from New Zealand to be imported only in commercial consignments. Produce grown commercially is less likely to be infested with plant pests than noncommercial consignments. Noncommercial consignments are more prone to infestations/infections because the commodity is often ripe to overripe, could be of a variety with unknown susceptibility to pests, and is often grown with little or no pest control. Commercial consignments, as defined in § 319.56-2, are consignments that an inspector identifies as having been imported for sale and distribution. Such identification is based on a variety of indicators, including, but not limited to: Quantity of produce, type of packing, identification of grower or packinghouse on the packaging, and documents consigning the fruits or vegetables to a wholesaler or retailer.

#### Place of Production Requirements

Paragraph (c)(1) of proposed § 319.56-76 would require that all places of production (orchards) participating in the persimmon export program be registered with and approved by the NPPO of New Zealand in accordance with the requirements of the operational workplan.

Paragraph (c)(2) of proposed § 319.56-76 would require the NPPO of New Zealand or its approved designee<sup>1</sup> to visit and inspect the places of production monthly beginning at blossom drop and continuing until the end of the shipping season and to apply appropriate pest controls in

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<sup>1</sup> An approved designee is an entity with which the NPPO creates a formal agreement that allows that entity to certify that the appropriate procedures have been followed. The approved designee can be a contracted entity, a coalition of growers, or the growers themselves.

accordance with the operational workplan. APHIS may also monitor the places of production if necessary. If APHIS or the NPPO of New Zealand finds that a place of production is not complying with the requirements of the systems approach, no fruit from the place of production will be eligible for export to the United States until APHIS and the NPPO of New Zealand conduct an investigation and appropriate remedial actions have been implemented.

#### Packinghouse Requirements

We are proposing several requirements for packinghouse activities, which would be contained in paragraph (d) of proposed § 319.56-76. Paragraph (d)(1) would require that all packinghouses participating in the persimmon export program be registered with and approved by the NPPO of New Zealand in accordance with the requirements of the operational workplan.

Paragraph (d)(2) would require that, during the time that the packinghouse is in use for exporting persimmons to the United States, the packinghouse would only be allowed to accept persimmons from registered places of production and that the persimmons be segregated from other fruit. This requirement would prevent persimmons intended for export to the United States from being exposed to or mixed with persimmons or other fruit that are not produced according to the requirements of the systems approach.

Paragraph (d)(3) would require that any diseased or insect-infested fruits and fruits with surface pests be culled either before or during packing and removed from the packinghouse. Culling would also include any damaged or deformed fruit. Fruit with broken or bruised skin or that is deformed is more susceptible to infestation by pests than undamaged fruit.

Paragraph (d)(4) would state that final shipping containers would have to be marked to identify the place of production and packinghouse from which the consignment of fruit originated. Such registration and container marking would facilitate traceback of a consignment of persimmon fruit to the place of production in which it was grown and the packinghouse in

which it was packed in the event that quarantine pests were discovered in the consignment at the port of first arrival into the United States.

Paragraph (d)(5) would state that the NPPO of New Zealand must monitor packinghouse operations to verify that the packinghouses are complying with the requirements of the systems approach. If the NPPO of New Zealand finds that a packinghouse is not complying with the requirements of the systems approach, no persimmon fruit from the packinghouse will be eligible for export to the United States until APHIS and the NPPO of New Zealand conduct an investigation and both agree that the pest risk has been mitigated.

#### Phytosanitary Inspection

Paragraph (e) of proposed § 319.56-76 would require that a biometric sample of persimmon fruit jointly agreed upon by APHIS and the NPPO of New Zealand be inspected in the exporting country by the NPPO of New Zealand following post-harvest processing. The biometric sample would be visually inspected for signs of disease, and a portion of the fruit would be cut open to detect internally feeding pests. If quarantine pests are found during sampling, the consignment of fruit would be prohibited from export to the United States.

#### Postharvest Treatment

Paragraph (f) of proposed § 319.56-76 would require that all persimmons undergo postharvest treatment with either hot water or modified atmosphere treatment. Under the hot water treatment, the persimmons would have to be held for 20 minutes in hot water at 50 °C (122 °F). This treatment has been shown to provide 100 percent mortality of leafroller moth larvae. In addition, hot water treatment reduces populations of fungal pathogens such as C. horii and C. actinidiae on fruit.

Under the modified atmosphere treatment, the persimmons would have to be packed in semi-permeable polymeric bags and stored at 0 °C for a minimum of 28 days. As the fruit

respire within the modified atmosphere bag, oxygen is consumed and carbon dioxide is produced which causes mortality of any leafrollers present. Modified atmosphere cold storage has been used by New Zealand for all persimmons exported to Australia since 2007. Since this treatment was initiated, there have been no quarantine pests detected in New Zealand persimmons exported to Australia. Treatment with either the described hot water or modified atmosphere treatments, in conjunction with other safeguards that would be required by the regulations for persimmons from New Zealand, would reduce the likelihood that persimmons will introduce injurious plant pests into the United States.

#### Phytosanitary Certificate

To certify that the fresh persimmon fruit from New Zealand has been grown and packed in accordance with the requirements of proposed § 319.56-76, paragraph (g) would require each consignment of fruit to be accompanied by a phytosanitary certificate issued by the NPPO of New Zealand, with an additional declaration stating that they were produced under and meet all the components of the systems approach and were inspected and found to be free of quarantine pests in accordance with the requirements.

#### Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under FOR FURTHER INFORMATION CONTACT or on the Regulations.gov Web site (see ADDRESSES above for instructions for accessing Regulations.gov).

APHIS is proposing to amend the regulations to allow the importation of fresh persimmon fruit (Diospyros kaki) into the entire United States from New Zealand subject to a systems approach. Most U.S. persimmon production takes place in California, where the 2011 value of production totaled about \$13.6 million. The most recent data on U.S. persimmon imports show a total value of about \$3 million in 2014. The wholesale value of the persimmon fruit for which New Zealand has requested import access would be about \$90,000 initially. The value of future imports is forecast to reach about \$330,000, or about 2 percent of the U.S. persimmon market.

The Small Business Administration's (SBA) small-entity standard for entities involved in fruit farming is \$750,000 or less in annual receipts (NAICS 111339). It is probable that most or all U.S. persimmon producers are small businesses by the SBA standard. We expect any impact of the proposed rule for these entities would be minimal, given New Zealand's expected small share of the U.S. persimmon market.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

#### Executive Order 12988

This proposed rule would allow persimmons to be imported into the United States from New Zealand. If this proposed rule is adopted, State and local laws and regulations regarding persimmons imported under this rule would be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this

proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

#### Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), reporting and recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send comments on the Information Collection Request (ICR) to OMB's Office of Information and Regulatory Affairs via email to [oir\\_submissions@omb.eop.gov](mailto:oir_submissions@omb.eop.gov), Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS-2015-0052. Please send a copy of your comments to APHIS using one of the methods described under ADDRESSES at the beginning of this document.

APHIS is proposing to allow the importation of fresh persimmons from New Zealand into the United States. As a condition of entry, the persimmons would have to be produced in accordance with a systems approach that would include requirements for orchard certification, orchard pest control, post-harvest safeguards, fruit culling, traceback, sampling, and treatment with either hot water or modified atmosphere treatment. The persimmons would also have to be accompanied by a phytosanitary certificate with an additional declaration stating that they were produced under, and meet all the components of, the systems approach and were inspected and found to be free of quarantine pests in accordance with the proposed requirements.

Implementing this rule will require information collection activities, such as an operational workplan, production site and packinghouse registration, container markings, production site inspections, investigations and remedial action, packinghouse monitoring, sampling, treatment records, and phytosanitary certificates.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 1.12 hours per response.

Respondents: Growers, exporters, packinghouses, and the NPPO of New Zealand.

Estimated annual number of respondents: 30.

Estimated annual number of responses per respondent: 10.

Estimated annual number of responses: 301.

Estimated total annual burden on respondents: 339 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

A copy of the information collection may be viewed on the Regulations.gov Web site or in our reading room. (A link to Regulations.gov and information on the location and hours of the reading room are provided under the heading ADDRESSES at the beginning of this proposed

rule.) Copies can also be obtained from Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2727. APHIS will respond to any ICR-related comments in the final rule. All comments will also become a matter of public record.

#### E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2727.

#### List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

#### PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. Section 319.56-76 is added to read as follows:

#### **§ 319.56-76 Persimmons From New Zealand.**

Fresh persimmons (Diospyros kaki Thunb.) may be imported into the United States only under the conditions described in this section. These conditions are designed to prevent the introduction of the quarantine pests Colletotrichum horii B. Weir & P.R. Johnst., Cnephasia jactatana (Walker), Cryptosporiopsis actinidiae P.R. Johnst., M.A. Manning & X. Meier,

Ctenopseustis herana (Felder and Rogenhofer), Ctenopseustis obliquana (Walker), Epiphyas postvittana (Walker), Planotortrix excessana (Walker), Sperchia intractana (Walker), and Stathmopoda skelloni (Butler).

(a) Operational workplan. The national plant protection organization (NPPO) of New Zealand must provide an operational workplan to APHIS that details the activities that the NPPO of New Zealand will, subject to APHIS' approval of the workplan, carry out to meet the requirements of this section. The operational workplan must include and describe the quarantine pest survey intervals and other specific requirements as set forth in this section.

(b) Commercial consignments. Persimmons from New Zealand may be imported in commercial consignments only.

(c)(1) Place of production requirements. All places of production that participate in the export program must be approved by and registered with the New Zealand NPPO in accordance with the requirements of the operational workplan.

(2) The NPPO of New Zealand or its approved designee must visit and inspect the places of production monthly beginning at blossom drop and continuing until the end of the shipping season for quarantine pests. Appropriate pest controls must be applied in accordance with the operational workplan. If the NPPO of New Zealand finds that a place of production is not complying with the requirements of this section, no fruit from the place of production will be eligible for export to the United States until APHIS and the NPPO of New Zealand conduct an investigation and appropriate remedial actions have been implemented.

(d)(1) Packinghouse requirements. All packinghouses that participate in the export program must be approved by and registered with the New Zealand NPPO in accordance with the requirements of the operational workplan.

(2) During the time the packinghouse is in use for exporting persimmons to the United States, the packinghouse may only accept persimmons from registered approved places of production and the fruit must be segregated from fruit intended for other markets.

(3) All diseased or insect-infested fruit and fruit with surface pests must be culled either before or during packing and removed from the packinghouse. Culling must also include any damaged or deformed fruit.

(4) Each shipping container must be marked to identify the place of production and packinghouse from which the consignment of fruit originated.

(5) The NPPO of New Zealand must monitor packinghouse operations to verify that the packinghouses are complying with the requirements of the systems approach. If the NPPO of New Zealand finds that a packinghouse is not complying with the requirements of this section, no fruit from the packinghouse will be eligible for export to the United States until APHIS and the NPPO of New Zealand conduct an investigation and appropriate remedial actions have been implemented.

(e) Sampling. Inspectors from the NPPO of New Zealand must inspect a biometric sample of the fruit from each consignment at a rate jointly agreed upon by APHIS and the NPPO of New Zealand. The inspectors must visually inspect for quarantine pests listed in the operational workplan required by paragraph (a) of this section and must cut fruit to inspect for quarantine pests that are internal feeders. If quarantine pests are detected in this inspection, the consignment will be prohibited entry into the United States.

(f) Treatment. Each consignment of persimmons must be subjected to a post-harvest treatment by either:

(1) Hot water treatment. The persimmons are held for 20 minutes in hot water at 50 °C (122 °F); or

(2) Modified atmosphere treatment. The persimmons are packed in semi-permeable polymeric bags and stored at 0 °C for a minimum of 28 days.

(g) Phytosanitary certificate. Each consignment of persimmons must be accompanied by a phytosanitary certificate of inspection issued by the New Zealand NPPO with an additional declaration stating that the fruit in the consignment were grown, packed, and inspected and found to be free of quarantine pests in accordance with the requirements of the systems approach.

Done in Washington, DC, this 22<sup>nd</sup> day of August 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

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